

AMENDED IN SENATE JUNE 26, 2013

AMENDED IN ASSEMBLY APRIL 18, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1128

Introduced by Assembly Member Salas

February 22, 2013

An act to amend Section 25658 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1128, as amended, Salas. Alcoholic beverages: underage drinking.

Existing law provides that every person who *sells, furnishes, gives, or causes to be sold, furnished, or given away an alcoholic beverage to a person under 21 years of age, or who purchases any alcoholic beverage for, or furnishes, gives, or gives away any alcoholic beverage to, a person under 21 years of age who thereafter consumes the alcohol and then causes great bodily injury or death to himself, herself, or any other person*, is guilty of a misdemeanor ~~punishable by a fine of \$1,000 and community service.~~

This bill would *require that these acts be performed knowingly for the penalties to apply. The bill would include in this the provision regarding great bodily injury or death, described above*, a person who sells any alcoholic beverage to a person under 21 years of age and would provide that a violation of the prohibition is *also* punishable as a felony. This bill would provide for an exception from felony prosecution for a ~~retail employee of a licensee or employee, agent, or representative of a licensee~~, unless the ~~retail employee~~ *knew person had actual prior knowledge that the person to whom the alcoholic beverage was sold*

was under 21 years of age. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25658 of the Business and Professions
2 Code is amended to read:

3 25658. (a) Except as otherwise provided in subdivision (c),
4 every person who *knowingly* sells, furnishes, gives, or causes to
5 be sold, furnished, or given away any alcoholic beverage to any
6 person under 21 years of age is guilty of a misdemeanor.

7 (b) Except as provided in Section 25667, any person under 21
8 years of age who purchases any alcoholic beverage, or any person
9 under 21 years of age who consumes any alcoholic beverage in
10 any on-sale premises, is guilty of a misdemeanor.

11 (c) (1) Any person who violates subdivision (a) by *knowingly*
12 selling to, purchasing any alcoholic beverage for, or furnishing,
13 giving, or giving away any alcoholic beverage to, a person under
14 21 years of age, and the person under 21 years of age thereafter
15 consumes the alcohol and thereby proximately causes great bodily
16 injury or death to himself, herself, or any other person, is guilty
17 of either a misdemeanor or a felony.

18 ~~(2) A retail employee of a licensee shall not be subject to felony~~
19 ~~prosecution under this subdivision for the sale of any alcoholic~~
20 ~~beverage to a person under 21 years of age unless the retail~~
21 ~~employee knew the person to whom the alcoholic beverage was~~
22 ~~sold was under 21 years of age.~~

23 (2) *A licensee or employee, agent, or representative of a licensee*
24 *shall not be subject to felony prosecution under this subdivision*
25 *for the sale, furnishing, giving, or giving away of any alcoholic*
26 *beverage to a person under 21 years of age unless the licensee or*
27 *employee, agent, or representative of the licensee had actual prior*

1 *knowledge that the person to whom the alcoholic beverage was*
2 *sold, furnished, given, or given away was under 21 years of age.*

3 (d) Any on-sale licensee who knowingly permits a person under
4 21 years of age to consume any alcoholic beverage in the on-sale
5 premises, whether or not the licensee has knowledge that the person
6 is under 21 years of age, is guilty of a misdemeanor.

7 (e) (1) Except as otherwise provided in paragraph (2) or (3),
8 or Section 25667, any person who violates this section shall be
9 punished by a fine of two hundred fifty dollars (\$250), no part of
10 which shall be suspended, or the person shall be required to
11 perform not less than 24 hours or more than 32 hours of community
12 service during hours when the person is not employed and is not
13 attending school, or a combination of a fine and community service
14 as determined by the court. A second or subsequent violation of
15 subdivision (b), where prosecution of the previous violation was
16 not barred pursuant to Section 25667, shall be punished by a fine
17 of not more than five hundred dollars (\$500), or the person shall
18 be required to perform not less than 36 hours or more than 48 hours
19 of community service during hours when the person is not
20 employed and is not attending school, or a combination of a fine
21 and community service as determined by the court. It is the intent
22 of the Legislature that the community service requirements
23 prescribed in this section require service at an alcohol or drug
24 treatment program or facility or at a county coroner's office, if
25 available, in the area where the violation occurred or where the
26 person resides.

27 (2) Except as provided in paragraph (3), any person who violates
28 subdivision (a) by furnishing an alcoholic beverage, or causing an
29 alcoholic beverage to be furnished, to a minor shall be punished
30 by a fine of one thousand dollars (\$1,000), no part of which shall
31 be suspended, and the person shall be required to perform not less
32 than 24 hours of community service during hours when the person
33 is not employed and is not attending school.

34 (3) Any person who violates subdivision (c) shall be punished
35 by either imprisonment in a county jail for a minimum term of six
36 months not to exceed one year, by a fine of one thousand dollars
37 (\$1,000), or by both imprisonment and fine, or as described in
38 Section 25618.

39 (f) Persons under 21 years of age may be used by peace officers
40 in the enforcement of this section to apprehend licensees, or

1 employees or agents of licensees, or other persons who sell or
2 furnish alcoholic beverages to minors. Notwithstanding subdivision
3 (b), any person under 21 years of age who purchases or attempts
4 to purchase any alcoholic beverage while under the direction of a
5 peace officer is immune from prosecution for that purchase or
6 attempt to purchase an alcoholic beverage. Guidelines with respect
7 to the use of persons under 21 years of age as decoys shall be
8 adopted and published by the department in accordance with the
9 rulemaking portion of the Administrative Procedure Act (Chapter
10 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
11 Title 2 of the Government Code). Law enforcement-initiated minor
12 decoy programs in operation prior to the effective date of regulatory
13 guidelines adopted by the department shall be authorized as long
14 as the minor decoy displays to the seller of alcoholic beverages
15 the appearance of a person under 21 years of age. This subdivision
16 shall not be construed to prevent the department from taking
17 disciplinary action against a licensee who sells alcoholic beverages
18 to a minor decoy prior to the department's final adoption of
19 regulatory guidelines. After the completion of every minor decoy
20 program performed under this subdivision, the law enforcement
21 agency using the decoy shall notify licensees within 72 hours of
22 the results of the program. When the use of a minor decoy results
23 in the issuance of a citation, the notification required shall be given
24 to licensees and the department within 72 hours of the issuance of
25 the citation. A law enforcement agency may comply with this
26 requirement by leaving a written notice at the licensed premises
27 addressed to the licensee, or by mailing a notice addressed to the
28 licensee.

29 (g) The penalties imposed by this section do not preclude
30 prosecution or the imposition of penalties under any other provision
31 of law, including, but not limited to, Section 272 of the Penal Code
32 and Section 13202.5 of the Vehicle Code.

33 SEC. 2. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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